

RECEIVED

2016 MAY 12 PM 12:12

OFFICE OF THE SECRETARY
FEDERAL MARITIME COMMISSION

Original Title Page

HMM/ZIM
SLOT EXCHANGE AGREEMENT

A Cooperative Working Agreement

FMC Agreement No. **012412**

Expiration Date: None

This Agreement has not been published previously.



TABLE OF CONTENTS

<u>Article</u>	<u>Name</u>	<u>Page No.</u>
1	Name of the Agreement	1
2	Purpose of the Agreement	1
3	Parties to the Agreement	1
4	Geographic Scope	1
5	Overview of Agreement Authority	2
6	Administration and Delegation of Authority	4
7	Effectiveness, Duration and Termination	4
8	Assignment	6
9	Law and Arbitration	6
10	Language	7
11	Notices	7
12	Enforceability	8
13	Disclaimer of Partnership	8
	Signature Page	

ARTICLE 1: NAME OF THE AGREEMENT

The name of this agreement is the HMM/Zim Slot Exchange Agreement (the "Agreement").

ARTICLE 2: PURPOSE OF THE AGREEMENT

The purpose of the Agreement is to authorise the parties to exchange slots on their respective services in the Trade (as hereinafter defined).

ARTICLE 3: PARTIES TO THE AGREEMENT

The parties to the Agreement are as follows:

Hyundai Merchant Marine Co., Ltd. ("HMM")

Address: 194, Yulgok-ro, Jongno-gu,
Seoul 110-754, Korea

ZIM Integrated Shipping Services, Ltd. ("ZIM")

Address: 9 Andrei Sakharov Street
"Matam" – Scientific Industries Center
P.O.B. 1723
Haifa, 3101601, Israel

HMM and ZIM are sometimes referred to individually as a "Party" and jointly as the "Parties."

ARTICLE 4: GEOGRAPHIC SCOPE

The scope of the Agreement shall be the trade between ports of the People's Republic of China (including Hong Kong), Malaysia, Panama, Saudi Arabia, Singapore, Sri Lanka, Taiwan, Vietnam, and the United States East Coast and Gulf of Mexico.

ARTICLE 5: OVERVIEW OF AGREEMENT AUTHORITY

5.1. Slot Exchange

(a) HMM shall initially provide ZIM with minimum 150 TEUs/1,575 DWT, @10.5tons/TEU weekly on its China East Coast (CEC) Service.

(b) ZIM shall initially provide HMM with minimum 150 TEUs/1,575 DWT, @10.5tons/TEU weekly on its Seven Star Express (Z7S) service.

(c) The preceding allocations shall be on a weekly round trip voyage basis.

(d) The Parties reserve the right to increase the number of slots sold purchased and/or exchanged up to an amount of 300 TEUs / 3,150 tons DWT @ 10.5tons/TEU as the Parties may agree without the need for further amendment of this Agreement. The Parties are authorized to buy/sell additional slots from/to one another on an *ad hoc* basis, subject to space availability.

(e) The Parties may use slots made available to them under this Agreement to transport transshipment cargo moving from origins and/or to destinations beyond the geographic scope of this Agreement.

(f) Neither Party may sub-charter space made available to it hereunder to another carrier without the prior written consent of the other Party.

5.2. Vessel Schedules

Each Party providing space hereunder shall keep the other Party advised of its vessel scheduling, and shall provide not less than thirty (30) days advance written

notice of any permanent change in port calls, port rotation, or other changes in its service(s). If a Party structurally modify its service and the other Party is of the opinion that such modification is or may be detrimental to its use of the space chartered, the Parties shall discuss the modification and changes (if any) to this Agreement. If the Parties do not reach an agreement, then the Slot receiving Party may terminate the Agreement upon 30 days written notice. For purposes of this subsection "detrimental" shall mean loss of port call that is significant to the Slot receiving Party, or a material impact to the service quality caused by the structural change in the rotation including change in transit time. Both Parties may without amendment to this Agreement by mutual agreement make changes due to the modification of the services.

5.3. Terminals and Stevedores

The Parties are authorized to discuss and agree on the joint and/or individual negotiation of appropriate contracts with terminal operators and stevedores, and to reach agreement on other issues relating to the loading and/or discharge of cargo, such as overtime and stand-by time.

5.4 Operational and Administrative Matters

The Parties may discuss and agree upon general administrative matters related to the implementation of this Agreement as may be necessary or convenient from time to time including, but not limited to, performance and payment procedures, recordkeeping, responsibility for loss or damage, insurance, liabilities, claims, indemnifications, consequences for delays, force majeure, settlement of claims, and treatment of dangerous and hazardous cargoes.

5.5 Each Party shall operate under its own name, issue its own bill of lading, publish its own tariff and shall collect its own freights. Nothing in this Agreement shall constitute a partnership, association or joint venture.

5.6 Further Agreements

Pursuant to 46 C.F.R. §535.408(b), any further agreement between the Parties, other than those concerning routine operational and administrative matters, will not be implemented unless such agreement has been filed and become effective under the Shipping Act of 1984, as amended.

ARTICLE 6: ADMINISTRATION AND DELEGATION OF AUTHORITY

6.1 This Agreement shall be administered and implemented by meetings, decisions, memoranda and communications between the Parties.

6.2 The following individuals shall have the authority to file this Agreement and any modifications thereto with the Federal Maritime Commission, as well as the authority to delegate same:

- (a) Any authorised officer of each of the Parties; and
- (b) Legal counsel for each of the Parties.

ARTICLE 7: EFFECTIVENESS, DURATION AND TERMINATION

7.1 This Agreement will take effect when effective in accordance with the provisions of the Shipping Act of 1984, as amended, and will be implemented from the first sailing due to commence loading thereafter.

7.2 The Agreement will continue indefinitely, but either Party may withdraw from this Agreement by giving three (3) months written notice of

withdrawal; provided however, that no such notice may be given before December 31st, 2016 and may not become effective prior to March 31st, 2017.

7.3 Notwithstanding Articles 7.1 and 7.2 above, if at any time during the term of the Agreement there shall be a change in the control or a material change in the ownership of a Party and the other Party is of the opinion arrived at in good faith that such change is likely to materially prejudice the cohesion or viability of the Agreement, then the other Party may within three months of the coming into effect of such change terminate the Agreement on not less than three months written notice. For purposes of this Article 7.3 a change in the control or material change in the ownership of a Party shall not include any change of holding in the framework of a financial restructuring whereby shares are transferred and/or allocated to any third party, and any sale or transfer of shares by the shareholders thereafter (excluding to a container Liner operator).

7.4 Notwithstanding Articles 7.1 and 7.2 above, if at any time during the term of the Agreement a Party should become bankrupt or declare insolvency or have a receiving order made against it, suspend payments, or continue its business under a receiver for the benefit of any of its creditors, or if a petition is presented or a meeting convened for the purpose of considering a resolution, or other steps are taken, for the winding-up of the Party (otherwise than for the purposes of and followed by a resolution previously approved in writing by the other Party), or any event similar to any of the above shall occur under the laws of the Party's country of incorporation, then the other Party may terminate the Agreement with immediate effect.

ARTICLE 8: ASSIGNMENT

Neither Party may assign all or part of its rights and obligations under this Agreement without the written consent of the other Party.

ARTICLE 9: LAW AND ARBITRATION

9.1 This Agreement shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Article 9.

9.2 The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

9.3 The reference shall be to three arbitrators. A Party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other Party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other Party appoints its own arbitrator and given notice that it has does so within the 14 days specified. If the other Party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the Party referring a dispute to arbitration may, without the requirement of any further, prior notice to the other Party, appoint its arbitrator as Sole Arbitrator and shall advise the other Party accordingly. The

award of a sole arbitrator shall be binding on both Parties as if he had been appointed by agreement.

9.4 Nothing herein shall prevent the Parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator. In cases where neither the claim nor any counterclaim exceeds the sum of US\$ 100,000.00 (or such other sum as the Parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

9.5 Notwithstanding the above, the Parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Agreement.

ARTICLE 10: LANGUAGE

This Agreement and all notices, communications or other writing shall be in the English language and no Party shall have any obligation to translate such matter into any other language. The wording in the English language shall prevail.

ARTICLE 11: NOTICES

Any notice or other communication which one Party hereto may require to give or to make to the other under the Agreement shall, unless otherwise specifically provided herein, be written in English and sent by mail or email with copy by mail, to the points of entry and addresses of the other Party as designated from time to time.

ARTICLE 12: ENFORCEABILITY

If any provisions of any clause in the Agreement, as presently stated or later amended or adopted, shall be held to be invalid, illegal or unenforceable in any jurisdiction in which this Agreement is operational then this Agreement shall be invalid only to the extent of such invalidity, illegality or unenforceability and no further. All remaining provisions hereof shall remain binding and enforceable.

ARTICLE 13: DISCLAIMER OF PARTNERSHIP

This Agreement is not intended to create a partnership or joint liability under any jurisdiction.

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of this 30th day of April, 2016 and to file same with the U.S. Federal Maritime Commission.

HYUNDAI MERCHANT MARINE CO. LTD.

By: 

Name: Ted Song

Title: Head of Alliance Management

**ZIM INTEGRATED SHIPPING
SERVICES, LTD.**

By: 

Name: Mark E. Newcomb

Title: Counsel & Vice President